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Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

December 7, 2001

AO-01-32

Stephen Kraus
c/o Shannon O'Brien Committee
P.O. Box 8914
Boston, MA 02114

Re: Bain & Company Externship

Dear Mr. Kraus:

This letter is in response to your November 12, 2001 request for an advisory opinion.

You have stated that for the past three years Bain & Company has encouraged its employees to seek "externships," which are structured as leaves of absence from the firm to pursue work with other entities (either public or private). During the leave of absence, the "extern" is taken off Bain's payroll and is in no way associated with the company. Bain provides three or four externships every year to employees who want to try other employment opportunities while keeping their options for return to Bain open. The program enhances Bain's ability to retain, in the long-term, promising employees. In addition, the program provides employees with an opportunity to expand their skills and experience and thereby to enhance their value if they subsequently return to Bain.

Because former Bain employees generally take a severe pay cut to pursue these outside externships, Bain has a policy of supporting externs who would otherwise take a pay cut with a \$500 stipend per month. The firm also pays health and dental benefits for the term of the externship. The cost of such coverage is deducted from the one-time bonus check paid early in the externship.

You have taken a ten-month leave of absence from Bain to work for the Shannon O'Brien Committee (the Committee) as Operations Director. As a result, Bain is planning to give you the bonus that it gives all of its externs. For ten months the total stipend would be \$5,000 less the cost of health and dental benefits. You have been taken off Bain's payroll and you are in no way associated with the company at this time. You have provided a copy of the externship agreement between Bain and the Committee, the standard terms of which are similar to other externship agreements entered into

between Bain and other organizations employing externs. To your knowledge, this is the first time a Bain extern has worked for a political committee.

QUESTION

Is such a stipend consistent with the campaign finance law?

ANSWER

Yes. Payment of the stipend would comply with the campaign finance law because Bain would not be making the payment for the purpose of promoting or preventing the nomination or election of a candidate.

DISCUSSION

The campaign finance law states that business corporations may not “directly or indirectly give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or other valuable thing for the purpose of . . . promoting or preventing the nomination or election of any person to public office.” See M.G.L. c. 55, § 8. The statute also provides that political committees organized on behalf of a candidate may not “solicit or receive from such corporation . . . any gift, payment expenditure, contribution or promise to give, pay, expend or contribute for any such purpose.” Id.

The office closely scrutinizes any situation involving the potential use of corporate funds to influence candidate elections. See, e.g., AO-01-23 (stating that candidate may solicit businesses for funds to be used to distribute guide for purpose of providing information and assistance to senior citizens, but cautioning that the guide may not be used for political purposes). As noted in that opinion, “section 8 indicates a deep concern by the Legislature of corporate involvement in political fundraising.” Because section 8 is a criminal statute, however, it must be narrowly construed. See Weld for Governor v. Director of OCPF, 407 Mass. 761, 766 (1990). The office has not previously issued an opinion relating to stipends paid by corporations to externs who provide services to political committees organized on behalf of candidates.¹

If Bain were to pay your salary in return for work that you do for the Committee, such payment would violate section 8 as it would be considered a payment made to benefit the Committee. The payment of the stipend, however, as described in your letter and your conversations with OCPF staff, would not involve the making of such a payment. The terms of your contract are similar to the terms provided for other externs – Bain would not be treating you differently because you are working for a political committee. The stipend would not be paid for the purpose of benefiting the Committee. Instead, its purpose would be to retain Bain’s ability to keep promising employees in the long-term while at the same time providing employees with an opportunity to expand their skills and experience.

¹ Other opinions issued by this office emphasize that corporations must be careful to ensure that corporate resources are not used by candidate committees, PACs or party committees. See AO-01-02 in which the office stated that a full-time corporate employee could accept an additional part-time position with a political committee if the person’s employment with the committee was not a condition of her employment with the corporation and that the corporation accommodated her employment with the committee in a manner consistent with the corporation’s normal employment practices. In addition, although the person’s activities for the committee would primarily involve work during the evenings and on weekends, if the political work might involve infrequent use of corporate telephones and computers, the committee would need to reimburse the corporation for such use.

Finally, the plan does not involve the Committee in an “ongoing business or commercial venture” which is otherwise prohibited by the campaign finance law. Compare AO-93-27, in which this office concluded that a business corporation providing long-distance telephone services could not enter into an agreement with a political committee involving the receipt by the committee of commissions from the corporation based on the total billed by the corporation to customers enrolled by the committee.

This opinion is solely in the context of M.G.L. c. 55 and is based solely on the representations made in your letter and in conversations with your staff. Should you have additional questions, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan
Director

cc: Jennifer Fulton, Bain & Co.
MJS/gb